

1                                   **AMENDMENTS TO TOBACCO REGULATIONS**

2   2017 GENERAL SESSION

3   STATE OF UTAH

4                                   **Chief Sponsor: Bradley G. Last**

5                                   Senate Sponsor: \_\_\_\_\_

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7   **LONG TITLE**

8   **General Description:**

9           This bill establishes new requirements for the licensing of tobacco retail shops and  
10 amends the definition of smoking.

11 **Highlighted Provisions:**

12           This bill:

- 13           ▶ amends municipal and county business license practices for a retail tobacco  
14 specialty business;
- 15           ▶ amends the definition of smoking in the Utah Indoor Clean Air Act;
- 16           ▶ beginning January 1, 2018, requires a retail tobacco specialty business to obtain a  
17 permit from the local health department;
- 18           ▶ establishes requirements for the tobacco permit application;
- 19           ▶ establishes the standards a local health department shall apply when determining  
20 whether to issue a permit to a retail tobacco specialty business;
- 21           ▶ gives the local health department and the state Health Department enforcement  
22 authority; and
- 23           ▶ provides penalties for violations of the tobacco permits.

24 **Money Appropriated in this Bill:**

25           None

26 **Other Special Clauses:**

27           None



28 **Utah Code Sections Affected:**

29 AMENDS:

30 **10-8-41.6**, as enacted by Laws of Utah 2012, Chapter 154

31 **17-50-333**, as enacted by Laws of Utah 2012, Chapter 154

32 **26-38-2**, as last amended by Laws of Utah 2012, Chapter 171

33 **26-42-103**, as last amended by Laws of Utah 2015, Chapter 132

34 ENACTS:

35 **26-59-101**, Utah Code Annotated 1953

36 **26-59-102**, Utah Code Annotated 1953

37 **26-59-103**, Utah Code Annotated 1953

38 **26-59-104**, Utah Code Annotated 1953

39 **26-59-105**, Utah Code Annotated 1953

40 **26-59-106**, Utah Code Annotated 1953

41 **26-59-107**, Utah Code Annotated 1953

42 **26A-1-128**, Utah Code Annotated 1953



44 *Be it enacted by the Legislature of the state of Utah:*

45 Section 1. Section **10-8-41.6** is amended to read:

46 **10-8-41.6. Regulation of retail tobacco specialty business.**

47 (1) As used in this section:

48 (a) "Community location" means:

49 (i) a public or private kindergarten, elementary, middle, junior high, or high school;

50 (ii) a licensed child-care facility or preschool;

51 (iii) a trade or technical school;

52 (iv) a church;

53 (v) a public library;

54 (vi) a public playground;

55 (vii) a public park;

56 (viii) a youth center or other space used primarily for youth oriented activities;

57 (ix) a public recreational facility; ~~or~~

58 (x) a public arcade~~[-];~~ or

59 (xi) for a license issued on or after July 1, 2017, a homeless shelter.

60 (b) "Health Department" means the same as "department," as that term is defined in  
61 Section 26-1-2.

62 (c) "Local health department" means the same as that term is defined in Section  
63 26A-1-102.

64 ~~(b)~~ (d) "Retail tobacco specialty business" means a commercial establishment in  
65 which:

66 (i) the sale of tobacco products accounts for more than 35% of the total annual gross  
67 receipts for the establishment;

68 (ii) food and beverage products, excluding gasoline sales, is less than 45% of the total  
69 annual gross receipts for the establishment; and

70 (iii) the establishment is not licensed as a pharmacy under Title 58, Chapter 17b,  
71 Pharmacy Practice Act.

72 ~~(c)~~ (e) "Tobacco product" means:

73 (i) any cigar, cigarette, or electronic cigarette as defined in Section 76-10-101;

74 (ii) a tobacco product as defined in Section 59-14-102, including:

75 (A) chewing tobacco; or

76 (B) any substitute for a tobacco product, including flavoring or additives to tobacco;

77 and

78 (iii) tobacco paraphernalia as defined in Section 76-10-104.1.

79 (2) The regulation of a retail tobacco specialty business is an exercise of the police  
80 powers of the state, and through delegation, to other governmental entities.

81 (3) (a) Except as provided in Subsection ~~(7)~~ (8), and beginning July 1, 2012, a  
82 municipality shall require an entity to be licensed as a retail tobacco specialty business to  
83 conduct business as a retail tobacco specialty business in a municipality.

84 (b) A municipality may issue a retail tobacco specialty business license to an entity if  
85 the entity complies with the provisions of ~~Subsection (5)~~ Subsections (5) and (6).

86 (4) ~~Except as provided in Subsection (7), and beginning July 1, 2012, a~~ A business  
87 entity that ~~conducts~~ obtained a license as a retail tobacco specialty business in a municipality  
88 ~~[shall be licensed by the municipality as a retail tobacco specialty business]~~ before July 1,  
89 2017, or is operating under an exemption under Subsection (8) shall, on or before January 1,

90 2018, obtain a permit from a local health department under Title 26, Chapter 59, Tobacco  
91 Retail Permit.

92 (5) (a) A municipality may not issue a license to a retail tobacco specialty business if it  
93 is located within:

- 94 (i) 1,000 feet of a community location;
- 95 (ii) 600 feet of another retail tobacco specialty business; or
- 96 (iii) 600 feet from property used or zoned for:
  - 97 (A) agriculture use; or
  - 98 (B) residential use.

99 (b) For purposes of Subsection (5)(a), the proximity requirements shall be measured in  
100 a straight line from the nearest entrance of the retail tobacco specialty business to the nearest  
101 property boundary of the community location, or agricultural or residential use, without regard  
102 to intervening structures or zoning districts.

103 (6) (a) Beginning July 1, 2017, a county may not issue a license to an applicant for a  
104 retail tobacco specialty business until the applicant provides the county with:

105 (i) a permit for a retail tobacco specialty business issued under Title 26, Chapter 59,  
106 Tobacco Retail Permit by the local health department in which the retail tobacco specialty  
107 business is located; and

108 (ii) a license to sell tobacco products from the State Tax Commission.

109 (b) A retail tobacco specialty business that does not have a permit under Subsection (4)  
110 or (6)(a):

111 (i) shall keep tobacco products and tobacco paraphernalia from public view;

112 (ii) may not display any advertisement related to tobacco or tobacco paraphernalia that  
113 promotes the sale, distribution, or use of such products; and

114 (iii) may not sell, offer for sale, or offer to exchange for any form of consideration,  
115 tobacco, tobacco products, or tobacco paraphernalia.

116 [~~6~~] (7) (a) Nothing in this section:

117 (i) requires a municipality to issue a business license to a retail tobacco specialty  
118 business; or

119 (ii) prohibits a municipality from adopting more restrictive requirements on a tobacco  
120 specialty business than provided for in this section.

121 (b) A municipality may suspend or revoke a business license issued under this section:

122 (i) if a licensee engages in a pattern of unlawful activity under Title 76, Chapter 10,  
123 Part 16, Pattern of Unlawful Activity Act;

124 (ii) if a licensee violates the regulations restricting the sale and distribution of  
125 cigarettes and smokeless tobacco to protect children and adolescents issued by the United  
126 States Food and Drug Administration, 21 C.F.R. Part 1140; [~~or~~]

127 (iii) upon the recommendation of the Health Department or a local health department  
128 under Title 26, Chapter 59, Tobacco Retail Permit; or

129 [~~(iii)~~] (iv) under other provisions of state law or local ordinance.

130 [~~(7)~~] (8) (a) In accordance with Subsection [~~(7)~~] (8)(b), a retail tobacco specialty  
131 business that has a business license and is operating lawfully in a municipality on or before  
132 May 8, 2012, is exempt from Subsections (4) and (5).

133 (b) A retail tobacco specialty business may maintain an exemption under Subsection  
134 [~~(7)~~] (8)(a) if:

135 (i) the business license is renewed continuously without relapse or permanent  
136 revocation;

137 (ii) the retail tobacco specialty business is not closed for business or otherwise  
138 suspends the sale of tobacco products for more than 60 consecutive days;

139 (iii) the retail tobacco specialty business does not substantially change the business  
140 premises or its business operation; and

141 (iv) the retail tobacco specialty business maintains the right to operate under the terms  
142 of other applicable laws, including Title 26, Chapter 38, Utah Indoor Clean Air Act, zoning  
143 ordinances, building codes, and the business license issued prior to May 8, 2012 .

144 Section 2. Section **17-50-333** is amended to read:

145 **17-50-333. Regulation of retail tobacco specialty business.**

146 (1) As used in this section:

147 (a) "Community location" means:

148 (i) a public or private kindergarten, elementary, middle, junior high, or high school;

149 (ii) a licensed child-care facility or preschool;

150 (iii) a trade or technical school;

151 (iv) a church;

- 152 (v) a public library;
- 153 (vi) a public playground;
- 154 (vii) a public park;
- 155 (viii) a youth center or other space used primarily for youth oriented activities;
- 156 (ix) a public recreational facility; ~~[or]~~
- 157 (x) a public arcade~~[-];~~ or
- 158 (xi) for a license issued on or after July 1, 2017, a homeless shelter.
- 159 (b) "Health Department" means the same as "department," as that term is defined in

Section 26-1-2.

- 161 (c) "Local health department" means the same as that term is defined in Section
- 162 26A-1-102.

163 ~~[(b)]~~ (d) "Retail tobacco specialty business" means a commercial establishment in  
164 which:

165 (i) the sale of tobacco products accounts for more than 35% of the total annual gross  
166 receipts for the establishment;

167 (ii) food and beverage products, excluding gasoline sales, is less than 45% of the total  
168 annual gross receipts for the establishment; and

169 (iii) the establishment is not licensed as a pharmacy under Title 58, Chapter 17b,  
170 Pharmacy Practice Act.

171 ~~[(e)]~~ (e) "Tobacco product" means:

172 (i) any cigar, cigarette, or electronic cigarette as defined in Section 76-10-101;

173 (ii) a tobacco product as defined in Section 59-14-102, including:

174 (A) chewing tobacco; or

175 (B) any substitute for a tobacco product, including flavoring or additives to tobacco;

176 and

177 (iii) tobacco paraphernalia as defined in Section 76-10-104.1.

178 (2) The regulation of a retail tobacco specialty business is an exercise of the police  
179 powers of the state, and through delegation, to other governmental entities.

180 (3) (a) Except as provided in Subsection ~~[(7)]~~ (8), and beginning July 1, 2012, a county  
181 shall require an entity to be licensed as a retail tobacco specialty business to conduct business  
182 as a retail tobacco specialty business in a county.

183 (b) A county may issue a retail tobacco specialty business license to an entity if the  
184 entity complies with the provisions of ~~[Subsection (5)]~~ Subsections (5) and (6).

185 (4) ~~[Except as provided in Subsection (7), and beginning July 1, 2012, a]~~ A business  
186 entity that ~~[conducts]~~ ~~obtained~~ a retail tobacco specialty business in a county ~~[shall be licensed~~  
187 by the county as a retail tobacco specialty business] before July 1, 2017, or is operating under  
188 an exemption under Subsection (8), shall, on or before January 1, 2018, obtain a permit from a  
189 local health department under Title 26, Chapter 59, Tobacco Retail Permit.

190 (5) (a) A county may not issue a license to a retail tobacco specialty business if it is  
191 located within:

- 192 (i) 1,000 feet of a community location;
- 193 (ii) 600 feet of another retail tobacco specialty business; or
- 194 (iii) 600 feet from property used or zoned for:
- 195 (A) agriculture use; or
- 196 (B) residential use.

197 (b) For purposes of Subsection (5)(a), the proximity requirements shall be measured in  
198 a straight line from the nearest entrance of the retail tobacco specialty business to the nearest  
199 property boundary of the community location, or agricultural or residential use, without regard  
200 to intervening structures or zoning districts.

201 (6) (a) Beginning July 1, 2017, a county may not issue a license to an applicant for a  
202 retail tobacco specialty business until the applicant provides the county with:

203 (i) a permit for a retail tobacco specialty business issued under Title 26, Chapter 59,  
204 Tobacco Retail Permit, by the local health department in which the tobacco specialty business  
205 is located; and

206 (ii) a license to sell tobacco products from the State Tax Commission.

207 (b) A retail tobacco specialty business that does not have a permit under Subsection (4)  
208 or (6)(a):

209 (i) shall keep tobacco products and tobacco paraphernalia from public view;

210 (ii) may not display any advertisement related to tobacco or tobacco paraphernalia that  
211 promotes the sale, distribution, or use of such products; and

212 (iii) may not sell, offer for sale, or offer to exchange for any form of consideration,  
213 tobacco, tobacco products, or tobacco paraphernalia.

214 [~~6~~] (7) (a) Nothing in this section:

215 (i) requires a county to issue a business license to a retail tobacco specialty business; or

216 (ii) prohibits a county from adopting more restrictive requirements on a tobacco  
217 specialty business than provided for in this section.

218 (b) A county may suspend or revoke a business license issued under this section:

219 (i) if a licensee engages in a pattern of unlawful activity under Title 76, Chapter 10,  
220 Part 16, Pattern of Unlawful Activity Act;

221 (ii) if a licensee violates the regulations restricting the sale and distribution of  
222 cigarettes and smokeless tobacco to protect children and adolescents issued by the United  
223 States Food and Drug Administration, 21 C.F.R. Part 1140; [~~or~~]

224 (iii) upon the recommendation of the Health Department or a local health department  
225 under Title 26, Chapter 59, Tobacco Retail Permit; or

226 [~~(iii)~~] (iv) under other provisions of state law or local ordinance.

227 [~~7~~] (8) (a) In accordance with Subsection [~~7~~] (8)(b), a retail tobacco specialty  
228 business that has a business license and is operating lawfully in a county on or before May 8,  
229 2012, is exempt from Subsections (4) and (5).

230 (b) A retail tobacco specialty business may maintain an exemption under Subsection  
231 [~~7~~] (8)(a) if:

232 (i) the business license is renewed continuously without relapse or permanent  
233 revocation;

234 (ii) the retail tobacco specialty business is not closed for business or otherwise  
235 suspends the sale of tobacco products for more than 60 consecutive days;

236 (iii) the retail tobacco specialty business does not substantially change the business  
237 premises or its business operation; and

238 (iv) the retail tobacco specialty business maintains the right to operate under the terms  
239 of other applicable laws, including Title 26, Chapter 38, Utah Indoor Clean Air Act, zoning  
240 ordinances, building codes, and the business license issued [~~prior to~~] before May 8, 2012.

241 Section 3. Section **26-38-2** is amended to read:

242 **26-38-2. Definitions.**

243 As used in this chapter:

244 (1) "E-cigarette":



- 245 (a) means any electronic oral device:
- 246 (i) that provides a vapor of nicotine or other substance; and
- 247 (ii) which simulates smoking through its use or through inhalation of the device; and
- 248 (b) includes an oral device that is:
- 249 (i) composed of a heating element, battery, or electronic circuit; and
- 250 (ii) marketed, manufactured, distributed, or sold as:
- 251 (A) an e-cigarette;
- 252 (B) e-cigar;
- 253 (C) e-pipe; or
- 254 (D) any other product name or descriptor, if the function of the product meets the
- 255 definition of Subsection (1)(a).
- 256 (2) "Place of public access" means any enclosed indoor place of business, commerce,
- 257 banking, financial service, or other service-related activity, whether publicly or privately owned
- 258 and whether operated for profit or not, to which persons not employed at the place of public
- 259 access have general and regular access or which the public uses, including:
- 260 (a) buildings, offices, shops, elevators, or restrooms;
- 261 (b) means of transportation or common carrier waiting rooms;
- 262 (c) restaurants, cafes, or cafeterias;
- 263 (d) taverns as defined in Section [32B-1-102](#), or cabarets;
- 264 (e) shopping malls, retail stores, grocery stores, or arcades;
- 265 (f) libraries, theaters, concert halls, museums, art galleries, planetariums, historical
- 266 sites, auditoriums, or arenas;
- 267 (g) barber shops, hair salons, or laundromats;
- 268 (h) sports or fitness facilities;
- 269 (i) common areas of nursing homes, hospitals, resorts, hotels, motels, "bed and
- 270 breakfast" lodging facilities, and other similar lodging facilities, including the lobbies,
- 271 hallways, elevators, restaurants, cafeterias, other designated dining areas, and restrooms of any
- 272 of these;
- 273 (j) (i) any child care facility or program subject to licensure or certification under this
- 274 title, including those operated in private homes, when any child cared for under that license is
- 275 present; and

276 (ii) any child care, other than child care as defined in Section 26-39-102, that is not  
 277 subject to licensure or certification under this title, when any child cared for by the provider,  
 278 other than the child of the provider, is present;

279 (k) public or private elementary or secondary school buildings and educational  
 280 facilities or the property on which those facilities are located;

281 (l) any building owned, rented, leased, or otherwise operated by a social, fraternal, or  
 282 religious organization when used solely by the organization members or their guests or  
 283 families;

284 (m) any facility rented or leased for private functions from which the general public is  
 285 excluded and arrangements for the function are under the control of the function sponsor;

286 (n) any workplace that is not a place of public access or a publicly owned building or  
 287 office but has one or more employees who are not owner-operators of the business;

288 (o) any area where the proprietor or manager of the area has posted a conspicuous sign  
 289 stating "no smoking", "thank you for not smoking", or similar statement; and

290 (p) a holder of a club license, as defined in Section 32B-1-102.

291 (3) "Publicly owned building or office" means any enclosed indoor place or portion of  
 292 a place owned, leased, or rented by any state, county, or municipal government, or by any  
 293 agency supported by appropriation of, or by contracts or grants from, funds derived from the  
 294 collection of federal, state, county, or municipal taxes.

295 (4) "Smoking" means:

296 (a) the possession of any lighted or heated tobacco product in any form;

297 (b) inhaling, exhaling, burning, or heating a substance [~~containing tobacco or nicotine~~  
 298 ~~intended for inhalation~~] through a cigar, cigarette, pipe, or hookah[;] that contains:

299 (i) tobacco;

300 (ii) nicotine;

301 (iii) a tobacco substitute or flavored product; or

302 (iv) an herbal product;

303 (c) [~~except as provided in Section 26-38-2.6;~~] using an e-cigarette; [~~or~~]

304 (d) using an oral smoking device intended to circumvent the prohibition of smoking in  
 305 this chapter[;]; or

306 (e) carrying, holding or otherwise having control of a lighted pipe, lighted cigar, lighted

307 cigarette, or other lighted tobacco paraphernalia as that term is defined in Section 76-10-104.1.

308 Section 4. Section **26-42-103** is amended to read:

309 **26-42-103. Violations and penalties -- Imposition by enforcing agency and tax**  
310 **commission.**

311 (1) If, following an investigation or issuance of a citation or information under Section  
312 77-39-101, an enforcing agency determines under Section 26-42-104 that a licensee or any  
313 employee has sold tobacco to a person younger than 19 years of age, as prohibited by Section  
314 76-10-104, the enforcing agency may impose upon the licensee the following administrative  
315 penalties:

316 (a) upon the first violation, a penalty of not more than [~~\$300~~] \$1,000;

317 (b) upon a second violation at the same retail location, and within [~~12~~] 24 months of  
318 the first violation, a penalty of not more than [~~\$750~~] \$3,000; and

319 (c) upon a third or subsequent violation at the same retail location and within [~~12~~] 24  
320 months of the first violation, a penalty of not more than [~~\$1,000~~] \$5,000.

321 (2) The enforcing agency shall notify the commission in writing of any order or order  
322 of default finding a violation of Subsection (1) which is a third or fourth violation.

323 (3) The commission, upon receipt of the written notification under Subsection (2), shall  
324 take action under Section 59-14-203.5 or 59-14-301.5 against the license to sell tobacco:

325 (a) by suspending the licensee's license to sell tobacco at that location for not more  
326 than 30 days, upon receipt of notification of a third violation under Subsection (1)(c); and

327 (b) by revoking the license to sell tobacco at that location held by the licensee,  
328 including any license under suspension, upon receipt of notification of a fourth violation under  
329 Subsection (1)(c).

330 (4) When the commission revokes a license under Subsection (3)(b), the commission  
331 may not issue to the licensee, or to the business entity using the license that is revoked, a  
332 license under Section 59-14-202, 59-14-301, or 59-14-803 to sell tobacco at the location for  
333 which the license was issued for one year after:

334 (a) the day on which the time for filing an appeal of the revocation ends; or

335 (b) if the revocation is appealed, the day on which the decision to uphold the  
336 revocation becomes final.

337 (5) This section does not prevent any bona fide purchaser of the business, who is not a

338 sole proprietor, director, corporate officer, or partner or other holder of significant interest in  
339 the entity selling the business, from immediately applying for and obtaining a license to sell  
340 tobacco.

341 Section 5. Section 26-59-101 is enacted to read:

342 **CHAPTER 59. TOBACCO RETAIL PERMIT**

343 **26-59-101. Title.**

344 This chapter is known as "Tobacco Retail Permit."

345 Section 6. Section 26-59-102 is enacted to read:

346 **26-59-102. Definitions.**

347 (1) As used in this chapter:

348 (a) "Community location" means:

349 (i) a public or private kindergarten, elementary, middle, junior high, or high school;

350 (ii) a licensed child-care facility or preschool;

351 (iii) a trade or technical school;

352 (iv) a church;

353 (v) a public library;

354 (vi) a public playground;

355 (vii) a public park;

356 (viii) a youth center or other space used primarily for youth oriented activities;

357 (ix) a public recreational facility;

358 (x) a public arcade; or

359 (xi) for a license issued by a municipality under Section 10-8-41.6 or a county under  
360 Section 17-50-333, on or after July 1, 2017, a homeless shelter.

361 (b) "Retail tobacco specialty business" means the same as that term is defined in  
362 Sections 10-8-41.6 and 17-50-333.

363 (c) "Tobacco product" means:

364 (i) any cigar, cigarette, or electronic cigarette as defined in Section 76-10-101;

365 (ii) a tobacco product as defined in Section 59-14-102, including:

366 (A) chewing tobacco; or

367 (B) any substitute for a tobacco product, including flavoring or additives to tobacco;

368 and

369 (iii) tobacco paraphernalia as defined in Section 76-10-104.1.

370 Section 7. Section **26-59-103** is enacted to read:

371 **26-59-103. Tobacco retail permit -- Tobacco retail license -- Enforcement powers.**

372 (1) (a) The regulation of a retail tobacco specialty business is an exercise of the police  
373 powers of the state, and, through delegation, by the department and by local health  
374 departments.

375 (b) A local health department and the department may inspect a retail tobacco specialty  
376 business to determine:

377 (i) whether a retail tobacco specialty business continues to meet the qualifications for  
378 the permit issued under this chapter;

379 (ii) whether a retail tobacco specialty business has violated any of the requirements for  
380 a license under Section 10-8-41.6 or 17-50-333;

381 (iii) whether a retail tobacco specialty business:

382 (A) engaged in a pattern of unlawful activity under Title 76, Chapter 10, Part 16,  
383 Pattern of Unlawful Activity Act; or

384 (B) violated the regulations restricting the sale and distribution of cigarettes and  
385 smokeless tobacco issued by the United States Food and Drug Administration, 21 C.F.R. Part  
386 1140, to protect children and adolescents; and

387 (iv) whether a retail tobacco specialty business has violated other provisions of state  
388 law or local ordinance.

389 (c) If the department or a local health department determines that a retail tobacco  
390 specialty business is in violation of the permit issued under this chapter or a license issued  
391 under Section 10-8-41.6 or 17-50-333, the local health department may take action under  
392 Section 26-59-107 and may recommend to a county or municipality that a license issued under  
393 Section 10-8-41.6 or 17-50-333 be suspended or revoked.

394 (2) (a) An applicant for a permit under this chapter shall submit an application for a  
395 permit to the local health department with jurisdiction for the business address for which the  
396 applicant seeks a permit and shall pay all applicable fees under Section 26-59-104.

397 (b) The application for a permit shall include:

398 (i) the name, address, and telephone number of each proprietor;

399 (ii) the business name, address, and telephone number of the single fixed location for

400 which a tobacco retail permit is sought;  
401 (iii) the name and mailing address of each proprietor authorized to receive permit  
402 related communication and notices;  
403 (iv) evidence that the location for which a tobacco retail permit is sought has been  
404 issued a valid tobacco license from the State Tax Commission;  
405 (v) information regarding whether any proprietor has been determined to have violated,  
406 or has been a proprietor at a location that has been determined to have violated:  
407 (A) this chapter;  
408 (B) Chapter 38, Utah Indoor Clean Air Act;  
409 (C) Title 76, Chapter 10, Part 16, Pattern of Unlawful Activity Act;  
410 (D) regulations restricting the sale and distribution of cigarettes and smokeless tobacco  
411 issued by the United States Food and Drug Administration, 21 C.F.R. Part 1140, to protect  
412 children and adolescents; or  
413 (E) other provisions of state law or local ordinance;  
414 (vi) if the person has provided information under Subsection (2)(b)(v), the dates and  
415 locations of all violations listed under Subsection (2)(b)(v);  
416 (vii) (A) sales data that shows whether the business' gross receipts from tobacco and  
417 tobacco paraphernalia at the location on the application for permit exceeds 35% of total annual  
418 gross receipts for the 12 months preceding the application; or  
419 (B) for a new businesses without 12 months of sales data, a statement of the business  
420 model for the location and an affidavit declaring whether the applicant intends to receive gross  
421 revenues from tobacco products that exceed 35% of the annual gross revenues; and  
422 (viii) evidence regarding whether the business location is within:  
423 (A) 1,000 feet of a community location;  
424 (B) 600 feet of another retail tobacco specialty business; or  
425 (C) 600 feet from property used or zoned for agricultural use or residential use.  
426 (c) For purposes of Subsection (2)(b)(viii), the proximity requirements shall be  
427 measured in a straight line from the nearest entrance of the retail tobacco specialty business to  
428 the nearest property boundary of the community location, or agricultural or residential use,  
429 without regard to intervening structures or zoning districts.  
430 (3) The local health department may not issue a permit under this chapter to a retail

431 tobacco specialty business unless the local health department determines from the application  
432 that:

433 (a) the applicant has not violated any of the provisions of Subsection (1);

434 (b) the retail tobacco specialty business meets the requirements of this chapter;

435 (c) the applicant meets the licensing requirements of Sections [10-8-41.6](#) and  
436 [17-50-333](#); and

437 (d) except as provided in Subsection (4), the establishment is not within the proximity  
438 of a community location as described in Subsection (2)(b).

439 (4) (a) A retail tobacco specialty business that has a business license and is operating  
440 lawfully in a municipality or county:

441 (i) on or before May 8, 2012, in accordance with Subsections [10-8-41.6\(8\)](#) and  
442 [17-50-333\(8\)](#), is exempt from the proximity of a community location in Subsection (3)(d); or

443 (ii) on or before July 1, 2017, is exempt from the proximity requirement for a homeless  
444 shelter.

445 (b) A retail tobacco specialty business may maintain an exemption under Subsection  
446 (4)(a) if:

447 (i) the business permit under this chapter is renewed continually without relapse or  
448 permanent revocation;

449 (ii) the retail tobacco specialty business does not close for business or otherwise  
450 suspend the sale of tobacco products for more than 60 consecutive days;

451 (iii) the retail tobacco specialty business does not substantially change the business  
452 premises or business operation; and

453 (iv) the retail tobacco specialty business maintains the right to operate under the terms  
454 of other applicable laws, including Chapter 38, Utah Indoor Clean Air Act, zoning ordinances,  
455 building codes, and the business license issued before May 8, 2012.

456 Section 8. Section **26-59-104** is enacted to read:

457 **26-59-104. Permit term and renewal fees.**

458 (1) The term of a tobacco retail permit is one year.

459 (2) The local health department may establish fees for a permit to recover the cost to  
460 the local health department for:

461 (a) enforcement and administration of permit requirements under this chapter;

462 (b) inspections and enforcement of licensing requirements under Section 10-8-41.6 and  
463 Section 17-50-333; and

464 (c) enforcement of this chapter.

465 (3) A tobacco retail permit holder may apply for a renewal of a permit no later than 30  
466 days before the expiration of the permit term.

467 (4) A retail tobacco specialty business that fails to renew a permit under Subsection (3)  
468 shall submit:

469 (a) the information required in Section 26-59-103;

470 (b) the renewal fee plus a late fee of 10% of the renewal fee; and

471 (c) a signed affidavit affirming that the proprietor has not sold tobacco products or  
472 tobacco paraphernalia during the time the permit was expired.

473 Section 9. Section **26-59-105** is enacted to read:

474 **26-59-105. Permit nontransferable.**

475 (1) A tobacco retail permit is nontransferable.

476 (2) A retail tobacco specialty business shall apply for a new permit if the information  
477 required in the permit application in Section 26-59-103 changes.

478 (3) Violations of this chapter or Section 10-8-41.6 or 17-50-333 that occur at a retail  
479 tobacco specialty business location shall stay on the record for the retail tobacco specialty  
480 business location unless:

481 (a) the retail tobacco specialty business has been transferred to a new proprietor; and

482 (b) the new proprietor provides documentation to the local health department that the  
483 new proprietor is acquiring the retail tobacco specialty business in an arm's length transaction  
484 from the previous proprietor.

485 Section 10. Section **26-59-106** is enacted to read:

486 **26-59-106. Other permit requirements and prohibitions.**

487 (1) A retail tobacco specialty business holding a tobacco retail permit shall:

488 (a) prominently display in a publicly and readily visible location the tobacco retail  
489 permit;

490 (b) inspect the photographic-identification of a purchaser of a tobacco product to  
491 confirm that the purchaser is of legal age to purchase the tobacco product; and

492 (c) prominently display at the point of purchase a sign that states that the sale of



493 tobacco is prohibited to a person under the age of 19 years.

494 (2) A business holding a tobacco retail permit under Subsection 26-59-103(3)(d) shall:

495 (a) not allow any person under the age of 19 years inside the business; and

496 (b) clearly display a sign on the public entrance of the business that a person under the

497 age of 19 years is prohibited from entering.

498 Section 11. Section **26-59-107** is enacted to read:

499 **26-59-107. Permit violation.**

500 (1) A retail tobacco specialty business is in violation of the tobacco retail permit if the

501 retail tobacco specialty business violates:

502 (a) this chapter;

503 (b) licensing laws under Section 10-8-41.6 or 17-50-333;

504 (c) Title 76, Chapter 10, Part 1, Cigarettes and Tobacco and Psychotoxic Chemical

505 Solvents;

506 (d) Title 76, Chapter 10, Part 16, Pattern of Unlawful Activity Act;

507 (e) regulations restricting the sale and distribution of cigarettes and smokeless tobacco

508 issued by the United States Food and Drug Administration, 21 C.F.R. Part 1140, to protect

509 children and adolescents; or

510 (f) other provisions of state law or local ordinance.

511 (2) (a) If following an investigation or issuance of a citation or information the  
512 department or a local health department determines under Subsection (2) that a retail tobacco

513 specialty business is in violation of a tobacco retail permit issued under this chapter, the

514 department or a local health department may suspend or revoke the permit issued under this

515 chapter and may impose the administrative penalties in Subsection (2)(b).

516 (b) (i) The penalty for a first violation is:

517 (A) a suspension of the tobacco retail permit for one business day within 30 days of the  
518 citation; or

519 (B) a penalty of not more than \$1,000.

520 (ii) The penalty for a second violation within 24 months of the first violation is:

521 (A) a suspension of the tobacco retail specialty business permit for five consecutive  
522 business days; or

523 (B) a penalty of not more than \$3,000.

524 (iii) The penalty for a third or subsequent violation within 24 months of the first  
525 violation is:

526 (A) a suspension of the retail tobacco specialty business permit or license for 30  
527 consecutive business days within 90 days of the third or subsequent violation; or

528 (B) a penalty of not more than \$5,000.

529 (3) The department or a local health department:

530 (a) may revoke a tobacco retail permit under this chapter if within 24 months of a first  
531 violation of the permit, a fourth violation occurs; and

532 (b) may suspend a tobacco retail permit and impose a monetary penalty as described in  
533 Section [26-42-103](#), if the violation is due to a tobacco sale to a person under the age of 19  
534 years.

535 (4) (a) Except as provided in Subsection (4)(b), a local health department may not issue  
536 a tobacco retail permit to:

537 (i) a retail tobacco specialty business that has violated the tobacco retail permit under  
538 Subsection (1) and had a permit suspended or revoked; or

539 (ii) another retail tobacco speciality business having the same proprietor that has  
540 violated a tobacco retail permit under Subsection (1) and had a permit suspended or revoked.

541 (b) A person described in Subsection (4)(a) whose tobacco retail permit:

542 (i) has been suspended, may not apply for a new permit under this chapter for any retail  
543 tobacco specialty business for a period of 12 months from the date the tobacco retail permit  
544 was suspended; or

545 (ii) has been revoked, may not apply for a new permit under this chapter for any retail  
546 tobacco specialty business for a period of 24 months from the date the tobacco retail permit  
547 was revoked.

548 Section 12. Section **26A-1-128** is enacted to read:

549 **26A-1-128. Tobacco permits -- Enforcement.**

550 A local health department:

551 (1) shall:

552 (a) establish a tobacco permit process in accordance with Title 26, Chapter 59,  
553 Tobacco Retail Permits; and

554 (b) enforce the requirements of Title 26, Chapter 59, Tobacco Retail Permits; and

555           (2) may:  
556           (a) enforce licensing requirements for entities that hold a business license to sell  
557 tobacco products under Section [10-4-41.6](#) or [17-50-333](#); and  
558           (b) recommend to a municipality or county that the business license of a tobacco retail  
559 specialty business be suspended or revoked for violations of this chapter or Section [10-4-41.6](#)  
560 or [17-50-333](#).

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**Legislative Review Note**  
**Office of Legislative Research and General Counsel**